

to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.

(d) Stays for variances other than section 301(g) variances are governed by §§ 124.16 and 124.60.

[48 FR 14264, Apr. 1, 1983, as amended at 65 FR 30912, May 15, 2000]

#### **§ 124.65 [Reserved]**

#### **§ 124.66 Special procedures for decisions on thermal variances under section 316(a).**

(a) The only issues connected with issuance of a particular permit on which EPA will make a final Agency decision before the final permit is issued under §§ 124.15 and 124.60 are whether alternative effluent limitations would be justified under CWA section 316(a) and whether cooling water intake structures will use the best available technology under section 316(b). Permit applicants who wish an early decision on these issues should request it and furnish supporting reasons at the time their permit applications are filed under § 122.21. The Regional Administrator will then decide whether or not to make an early decision. If it is granted, both the early decision on CWA section 316 (a) or (b) issues and the grant of the balance of the permit shall be considered permit issuance under these regulations, and shall be subject to the same requirements of public notice and comment and the same opportunity for an appeal under § 124.19.

(b) If the Regional Administrator, on review of the administrative record, determines that the information necessary to decide whether or not the CWA section 316(a) issue is not likely to be available in time for a decision on permit issuance, the Regional Administrator may issue a permit under § 124.15 for a term up to 5 years. This permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge no later than the date otherwise required by law. However, the permit shall also afford the permittee an opportunity to file a demonstration under CWA section 316(a) after conducting such studies as are required

under 40 CFR part 125, subpart H. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its CWA section 316(a) variance request is finally approved.

(c) Any proceeding held under paragraph (a) of this section shall be publicly noticed as required by § 124.10 and shall be conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied.

(d) Whenever the Regional Administrator defers the decision under CWA section 316(a), any decision under section 316(b) may be deferred.

[48 FR 14264, Apr. 1, 1983, as amended at 65 FR 30912, May 15, 2000]

## **PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

### **Subpart A—Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act**

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